

MARY JO LANZAFAME  
ASSISTANT CITY ATTORNEY

SHARON B. SPIVAK  
DEPUTY CITY ATTORNEY

OFFICE OF  
**THE CITY ATTORNEY**  
CITY OF SAN DIEGO

1200 THIRD AVENUE, SUITE 1620  
SAN DIEGO, CALIFORNIA 92101-4178  
TELEPHONE (619) 236-6220  
FAX (619) 236-7215

**Jan I. Goldsmith**  
CITY ATTORNEY

June 23, 2010

REPORT TO THE CITY COUNCIL

LEGAL STANDARDS RELATED TO FISCAL IMPACT ANALYSES SUBMITTED FOR  
BALLOT MEASURES

**INTRODUCTION**

City voters considering how to vote on a municipal ballot measure routinely consult the voter pamphlet provided by the San Diego County Registrar of Voters. The pamphlet may include arguments for or against a measure, along with a fiscal impact statement that seeks to explain a measure's budgetary impact if approved.

The San Diego Municipal Code governs who may prepare these materials. In February 2010, in compliance with the Municipal Code, the City Council voted to assign the Mayor's office, "in consultation with the Independent Budget Analyst," to prepare a fiscal impact analysis for the two measures the Council had placed on the June 2010 ballot. The Mayor's office timely filed both statements with the City Clerk's office.

State and local laws allow any voter to challenge ballot materials within a 10-day review period. On March 31, 2010, Councilmember Donna Frye (acting as an individual and not in her official capacity) filed a Petition for Writ of Mandate in Superior Court challenging the fiscal impact analysis submitted by the Mayor related to the ballot measure regarding the Strong Mayor Form of Governance. The petition alleged the fiscal impact analysis was false, misleading and inconsistent with the requirements of the Municipal Code. The parties reached a settlement in which they agreed on new language that met legal requirements. The court approved the settlement. The new language was substituted for that originally submitted and published in the voter pamphlet.

On April 1, 2010, Councilmember Frye proposed revising the Municipal Code to change the process for preparing fiscal impact analyses. Councilmember Frye's proposal would designate the Independent Budget Analyst as the person responsible for preparing the fiscal impact statement. Councilmember Frye submitted draft language to the Committee on Rules, Open Government and Intergovernmental Relations.

On April 28, 2010, the Rules Committee voted to direct Councilmember Frye to work with the City Attorney's Office to finalize draft language and to bring a proposed ordinance to

the full City Council that would give the IBA that responsibility. Although it was not part of the motion, three Councilmembers on the committee also said they wanted a “role” for the Mayor in the process of preparing a fiscal impact statement.

A copy of the strikeout form of an amended ordinance proposed by Councilmember Frye is attached. The City Attorney’s Office provides this report to assist the Council as it reviews the language.

## ANALYSIS

### I. **The San Diego Municipal Code Provides the Process for Preparing a Fiscal Impact Analysis for a City Ballot Measure.**

The San Diego Municipal Code provides the process for preparing a fiscal impact analysis. The provision states:

#### **§ 27.0506 Preparation of Fiscal Impact Analysis**

- (a) The City *Council* may direct the City Manager to prepare a fiscal impact analysis of the proposed legislative act. If so directed, the City Manager shall place the fiscal impact analysis on file in the Office of the City *Clerk* no later than 5:00 p.m. on the date established in accordance with the City *Clerk’s* administrative calendar for the *election* on the proposed legislative act.
- (b) The analysis shall not exceed 500 words in length.
- (c) The analysis shall include an estimate of the amount of any increase or decrease in revenues or costs to the City, or an option as to whether or not significant change in City finances would result if the proposed measure is adopted.
- (d) The analysis shall be printed in the *voter pamphlet* preceding any arguments for and against the proposed legislative act.

After the Strong Mayor Form of Governance went into effect, the City Attorney’s Office interpreted section 27.0506(a) to mean that the City Council could direct the Mayor (as opposed to “City Manager”) to prepare a fiscal impact statement. When providing that direction, the Council has routinely voted to add language stating that the Mayor prepare such a statement “in consultation with the Independent Budget Analyst.” The IBA’s position did not exist when section 27.0506 was enacted. The term “in consultation with” has not been defined in the resolutions providing that direction.

Section 27.0506 makes preparation of a fiscal impact analysis discretionary, not mandatory, with the decision to have one left to the City Council. It also used the same maximum word count (500) for fiscal impact statements as that set by state law for the impartial

analyses of ballot measures that are prepared by city attorneys and county counsel. See Cal. Elec. Code §§ 9160(b) and 9280.

## II. Proposed Amendments to the Process of Preparing a Fiscal Impact Analysis

California law requires that a “fiscal effect” analysis must reasonably inform the voters of the proposed measure’s fiscal impacts. Cal. Elec. Code, § 9087; See, generally, *Horneff v. City & County of San Francisco*, 110 Cal. App. 4th 814, 820 (2003). To this end, these materials must be true and impartial and not argumentative. *Id.* “The main purpose of these requirements is to avoid misleading the public with inaccurate information.” *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization*, 22 Cal. 3d 208, 243 (1978). The amendments proposed by Councilmember Frye would add language that states this legal standard, making clear to the author of a fiscal impact statement that it must be “true, impartial and not argumentative.”

California Elections Code section 9087, which governs the process for statewide ballot measures, also includes language that would provide added emphasis of the actual budgetary impact. The amendments would draw upon this language: “An estimate of increased cost to the state or local governments shall be set out in boldface print in the ballot pamphlet.” Cal. Elec. Code § 9087. The draft ordinance adds the “boldface print” requirement, for the ease of reading by voters.

Additionally, the proposed amendments would require preparation of a fiscal effect analysis, although it was previously discretionary, dependent upon the Council’s decision. The California Elections Code does not require a fiscal impact statement for ballot measures being placed on the ballot by general law cities. See Cal. Elec. Code § 9280. It does, however, require a fiscal impact statement for state ballot measures. See Cal. Elec. Code § 9087. Although the proposed amendment would make fiscal impact statements mandatory, this requirement could be met, if applicable, with a single sentence indicating there would be no anticipated fiscal impact. Courts have recognized the state’s strong interest in providing the electorate with accurate information in voter pamphlets and important rights to that information. This weighs in favor of including a fiscal impact statement in all instances, even if it is just to say no impact is anticipated. Our office does not believe there is a legal issue with requiring the inclusion of a fiscal impact statement for a municipal ballot measure, even though this is not mandatory for general law cities.

More significantly, the amendments would transfer responsibility from the City Manager to the Independent Budget Analyst to prepare the statement. As stated in the ordinance, the process for preparing a fiscal impact statement has not been amended since 1999, well before the Office of the Independent Budget Analyst was created. State law provides that California’s Legislative Analyst “shall prepare” the fiscal impact analysis of statewide ballot measures and head a detailed process that includes a committee to review the writing. The IBA holds a position that is analogous to that of the Legislative Analyst. See Cal. Elec. Code § 9087.

Municipal Code section 22.2304 provides that among the Independent Budget Analyst’s duties are “gathering, organizing, and analyzing data and information relative to budgetary issues,” “providing comparative studies of other cities as they relate to municipal finance,” “analyzing the City’s past, current, and proposed revenues and expenditures,” “reviewing the

economic effects of proposed legislation,” and “providing policy research and analysis on proposed legislation.” These duties already allow the Independent Budget Analyst to prepare the type of reports similar to a fiscal impact analysis for a proposed ballot measure. The proposed ordinance also includes language that allows the IBA to consult with the Mayor and to gather necessary information from the Mayor’s office in order to prepare the statement.

Please contact our office if you have additional questions regarding fiscal impact statements and related state and local law.

JAN I. GOLDSMITH, City Attorney

By   
Sharon B. Spivak  
Deputy City Attorney

SBS:jdf

RC-2010-16

cc: Elizabeth Maland, City Clerk  
Andrea Tevlin, Independent Budget Analyst

**STRIKEOUT ORDINANCE**

**OLD LANGUAGE: ~~Struck Out~~**

**NEW LANGUAGE: Underline**

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 7,  
DIVISION 5 OF THE SAN DIEGO MUNICIPAL CODE BY  
AMENDING SECTION 27.0506, RELATING TO THE  
PREPARATION OF THE FISCAL IMPACT ANALYSIS OF A  
BALLOT MEASURE.

**§ 27.0506 Preparation of Fiscal Impact Analysis**

- (a) ~~The City Council may direct the City Manager to~~ The Independent Budget Analyst shall prepare a fiscal impact analysis of the proposed legislative act. The Independent Budget Analyst may consult with the Mayor during the drafting process, and, if requested by the Independent Budget Analyst, the Mayor shall provide the Independent Budget Analyst with information necessary to draft the analysis. If so directed, the City Manager The Independent Budget Analyst shall place the fiscal impact analysis on file in the Office of the City Clerk no later than 5:00 p.m. on the date established in accordance with the City Clerk's administrative calendar for the *election* on the proposed legislative act.
- (b) [No change in text.]
- (c) The analysis shall include an estimate of the amount of any increase or decrease in revenues or costs to the City, or an option as to whether or not significant change in City finances would result if the proposed *measure* is

adopted. If it is estimated that a *measure* would result in an increased cost to the City, the estimate shall be set out in boldface print in the *voter pamphlet*.

(d) The fiscal impact analysis must reasonably inform the voters of the proposed *measure*'s fiscal impact and be true, impartial and not argumentative.

(e) [No change in text.]

SBS:jdf  
06/08/2010  
Or.Dept:Council-Frye